INDEX TO APPENDIX

Appendix A—Judgment and Opinion of the United States District Court, Southern District of Florida, dated November 14, 1962 ..... A1

Appendix B—Opinion and Judgment of the United States Court of Appeals for the Fifth Circuit, dated February 17, 1964 ..... A5

Appendix C—Order of United States Court of Appeals, Fifth Circuit, Denying Petition for Rehearing, dated March 17, 1964 ..... A9

APPENDIX A

ORDER PERMITTING TRUSTEE TO REJECT EXECUTORY CONTRACT.

Filed Dec. 14, 1962.

(Title Omitted.)

It Appearing from the record herein that Irwin Ray, Trustee in Reorganization of Atlas Sewing Centers, Inc., and its subsidiaries, on or about the 20th day of September, 1962; filed in this Court his Petition to Reject Executory Contract, the executory contract set forth in the petition being designated as "Master Agreement No. 1", a copy of which was attached to said petition, being an agreement by and between the debtor and its subsidiaries in reorganization and Beneficial Finance Company wherein it is alleged that Beneficial Finance Company for services to be rendered to the debtors in reorganization was to purchase all of the then existing and outstanding consumer paper owned by the debtors in reorganization, the consideration to be paid therefor being 75% of all collection realized by Beneficial Finance Company from the consumer paper assigned, and, as further consideration for the collection efforts of Beneficial Finance Company, Beneficial Finance Company according to the terms of the agreement was to retain 25% of all collections made.

Upon the petition of the Trustee this Court on the 20th day of September, 1962, prescribed the form and manner in which notice was to be given of a hearing to be conducted on the Trustee's petition and the persons to whom notice was to be directed, the Court having set the 8th day of November, 1962, at 2:00 o'clock P. M., Federal Building,

Miami, Florida, before the undersigned Judge as the time and place for said hearing.

On November 8th, 1962, in accordance with the order affixing the hearing, and in accordance with the notice prescribed by this Court and given by the Trustee, a hearing was conducted in open Court before me, at which time there were present J. Edward Worton, as attorney for Irwin Ray, Trustee; Shutts, Bowen, Simmons, Prevatt & Boureau, by Seneca B. Anderson, Esq., attorneys for Beneficial Finance Company; Randolph Guthrie, Esq., attorney for Majority Holders; Downey & Lewis, and Nicholson, Howard & Brawner, by Frank A. Howard, Esq., attorneys for Belk's Department Store; Irving M. Wolff, Esq., and Phillips, attorneys for Banco Popular de Puerto Rico; Harold Friedman, Esq., attorney for Brother International; and Patton & Kanner by Samuel J. Kanner, Esq., attorneys for the debtors.

At the time of the hearing the respondent, Beneficial Finance Company, filed in the proceedings a Motion to Dismiss the petition of the Trustee, alleging the lack of this Court's jurisdiction over the Trustee's petition and the subject matter thereof. In support of the Trustee's petition the Trustee presented testimony of witnesses for this Court's consideration, the same being: Herbert Kern, President of the debtors in reorganization; Eugene C. Rosiere, Vice President of the debtors in reorganization; and Charlotte Blackburn, Vice President of the debtors in reorganization. In addition the Trustee presented in support of his petition Exhibits #1, #2 and #3, which were admitted into evidence.

And it further appearing at the time of the hearing that the attorney for Beneficial Finance Company, at the conclusion of the Trustee's case, requested that this Court grant to Beneficial Finance Company a period of ten (10)

days within which to advise the Court whether or not Beneficial Finance Company desired by way of rebuttal of the Trustee's evidence to offer any evidence on its own; and the Court at the time of the entry of this order not having received any advice from Beneficial Finance Company in respect of its request for time to enter rebuttal evidence, it is concluded by this Court at this time that Beneficial Finance Company does not intend to offer any evidence,

Now upon the verified petition of the Trustee, the Motion to Dismiss filed herein by Beneficial Finance Company, the Answer to the Trustee's petition filed by the Majority Holders, and upon the testimony of witnesses, the Trustee's exhibits and the entire proceedings held before me on the 8th day of November, 1962, it appearing to the Court that the contract by and between the debtors in reorganization and Beneficial Finance Company is executory and burdensome to the estate of the debtors, it is

Ordered that Irwin Ray, Trustee in Reorganization of the debtors herein, be and he hereby is permitted to reject the contract designated "Master Agreement No. 1" by and between the debtors in reorganization and Beneficial Finance Co. of North Jersey, dated the 27th day of January, 1961. It is

Further Ordered that the entry of this order shall be deemed to constitute a rejection of said contract by the Trustee, Irwin Ray. It is

Further Ordered that the Motion to Dismiss filed by Beneficial Finance Company be and the same is hereby denied. It is

Further Ordered that Beneficial Finance Co. of North Jersey, its subsidiaries and affiliates wherever located, forthwith account to the Trustee, Irwin Ray, for all monies

collected and all monies expended pursuant to the terms and conditions of the agreement dated January 27th, 1961, to date. It is

Further Ordered that Beneficial Finance Co. of North Jersey, its subsidiaries and affiliates wherever located, forthwith turn over to the Trustee, Irwin Ray, all customer ledger cards, contracts, agreements, mortgages, notes, and customer paper of any and all description, held presently by Beneficial Finance Co. of North Jersey, its subsidiaries and affiliates, received pursuant to the terms of Master Agreement #1, dated January 27th, 1960. It is

Further Ordered that the Trustee, Irwin Ray, be and he is hereby authorized to forthwith embark upon collection of the accounts receivable, contracts, agreements, mortgages, notes and customer paper received from Beneficial Finance Co. of North Jersey, its subsidiaries and affiliates, which are turned over to him by virtue of the entry of this order, and that the Trustee, upon collecting monies from said receivables turned over to him, shall maintain and keep separate accounts in authorized depositories for the receipt of funds from those sources by him.

Done and Ordered at Miami, Florida, on this the 14th day of December, 1962.

EMETT C. CHOATE,
United States District Judge.

APPENDIX B

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 20302

BENEFICIAL FINANCE CO. OF NORTH JERSEY,
Appellant,

versus

IRWIN RAY, as Trustee under Reorganization Proceedings of ATLAS SEWING CENTERS, INC.,
Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(February 17, 1964.)

Before TUTTLE, Chief Judge, and PHILLIPS* and JONES, Circuit Judges.

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*Of the Tenth Circuit, sitting by designation.

PER CURIAM: It appearing that the written documents under which the conditional sales contracts here were transferred to appellant constituted appellant an agent only for collection of the contracts, we conclude that the trial court did not err in entering a summary turnover order. A reading of the contracts under which Beneficial obtained possession of the property makes it plain that it had no adverse claim of title to the contracts that was more than colorable. As we stated in *B. F. Avery & Sons Co.* v. *Davis*, 5 Cir., 192 F. 2d 255, quoted with approval in *Spach, Trustee* v. *Fisher*, 5 Cir., 310 F. 2d 328, 330:

> "Where a controversy arises as to whether there is such an adverse claim, the rule is that the referee can summarily enquire into it, and if it clearly appears that possession was in or for the bankrupt, and the adverse claim or right is only colorable, he may make a judgment accordingly; but if there be a possession before bankruptcy that was really adverse and asserted in good faith the referee may not adjudge its merits, but the trustee must seek relief by a plenary suit."

The order of the trial court is AFFIRMED.

United States Court of Appeals

FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1963

No. 20302

D. C. Docket No. 168-62-M-BK-EC

BENEFICIAL FINANCE CO. OF NORTH JERSEY,
Appellant,

versus

IRWIN RAY, as Trustee under Reorganization Proceedings of ATLAS SEWING CENTERS, INC.,
Appellee.

Appeal from the United States District Court for the Southern District of Florida.

Before TUTTLE, Chief Judge, and PHILLIPS* and JONES, Circuit Judges.

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*Of the Tenth Circuit, sitting by designation.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

On CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the order of the said District Court appealed from in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Beneficial Finance Co. of North Jersey, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

February 17, 1964

Issued as Mandate:

APPENDIX C

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 20,302

BENEFICIAL FINANCE CO. OF NORTH JERSEY,
Appellant,

v.

IRWIN RAY, as Trustee under Reorganization Proceedings of ATLAS SEWING CENTERS, INC.,
Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(March 17, 1964.)

ON PETITION FOR REHEARING

Before TUTTLE, Chief Judge, and PHILLIPS* and JONES, Circuit Judges.

PER CURIAM:

It is ORDERED that the petition for rehearing filed in the above styled and numbered cause be, and the same is, hereby DENIED.

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*Of the Tenth Circuit, sitting by designation.